

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

**File No. ER01018366
December 14, 2001**

NOTICE OF EMERGENCY RULEMAKING

**SUBJECT: ORGANIZED AUTOMOBILE INSURANCE FRAUD GRANT
FUNDING PROGRAM**

PROPOSED REGULATORY ACTION

The California Department of Insurance (CDI) proposes to amend sections 2698.70 and 2698.71 of Article 5 (sections 2698.70-2698.77) of Subchapter 9, Chapter 5, of Title 10 of the California Code of Regulations (CCR), regarding the program for the investigation and prosecution of organized automobile insurance fraud.

PUBLIC HEARING

PUBLIC PROCEEDINGS: Notice is hereby given that the CDI will conduct written proceedings, during which time any interested person or such persons duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the CDI, Criminal Investigations Branch, attn: Wesley E. Kennedy, Senior Staff Counsel at 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826, by 5 p.m. on January 30, 2002, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand delivered be submitted in triplicate. A public hearing regarding the proposed rulemaking has been set for January 30, 2002 at 10:00 a.m. at 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826.

Comments sent by facsimile: (916) 255-3344, or electronic mail: kennedyw@insurance.ca.gov must be received before 5:00 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the CDI to provide copies of any notices for proposed changes in the regulation text of which additional comments may be solicited.

CONTACT: Inquiries concerning the action described in this notice may be directed to Wesley E. Kennedy, Senior Staff Counsel, at (916) 854-5760. In any such inquiry, please identify the action by using the CDI regulation control number: ER01018366

AUTHORITY AND REFERENCE

Authority: Sections 1874.8, 1874.81, Insurance Code. Reference: Sections 1874.8(a), (g) and 1874.81, Insurance Code, Vehicle Code section 670.

INFORMATIVE DIGEST

The Insurance Commissioner of the State of California (Commissioner) proposes to amend Subchapter 9, Article 5, Sections 2698.70 and 2698.71, Title 10, Chapter 5 of the CCR regarding the program for investigation and prosecution of organized automobile fraud. The purpose of the proposed amendment is to implement, interpret and make specific the provisions of the California Insurance Code (CIC) sections 1874.8 and 1874.81 which require the Commissioner to assess and distribute certain funds to California district attorneys for the purpose of prosecuting organized automobile fraud cases.

AB 1050, Chapter 885, Statutes of 1999, was signed by the Governor on October 9, 1999 creating the Organized Crime Prevention and Victim Protection Act of 1999. AB 1050, inter alia, added CIC 1874.8 and 1874.81 as well modifying existing CIC section 1872.8. In adopting AB 1050, the Legislature made the following findings and declaration of purpose:

Section 1. (a) This act shall be known as the Organized Crime Prevention and Victim Prevention Act of 1999.

“(b) The Legislature finds that organized automobile fraud activity operating in the major urban centers of the state represents a significant portion of all individual fraud-related automobile insurance cases. These cases result in artificially higher insurance premiums for core urban areas and low-income areas of the state than for other areas of the state. Only a focused, coordinated effort by all appropriate agencies and organizations can effectively deal with this problem.”

CIC section 12921 requires the Commissioner to enforce the provisions of the Insurance Code and other laws regulating the business of insurance in the State of California. CIC section 1874.8 requires the Commissioner to establish an annual assessment on each automobile for which a policy of insurance has been issued in order to fund the activity of the Commissioner, the California Highway Patrol and from 3 to 10 county District Attorney's Offices.

The proposed amendments are necessary to implement, interpret and make specific the provisions of CIC sections 1872.8, 1874.8 and 1874.81 and to conform title 10, CCR sections 2698.70 and 2698.71 with similar provisions in title 10, CCR sections 2698.61 and 2698.62. The proposed action would specify the criteria for the calculation and payment of the annual assessment as well as specify that the Commissioner may conform the overall amount of the assessment to be collected so as not to exceed the maximum amount of program expenditures authorized by the annual budget.

The specific regulations being amended by this notice are as follows:

Section 2698.70 Definitions

This notice would amend subsection (p) to add text to expressly include within the definition of vehicle both commercial and non-commercial vehicles.

Section 2698.71 Annual Fee

This notice would amend the existing text of subsection (a) to provide for an annualized payment of the assessment, eliminate existing text expressly prohibiting prorating of the payment of the assessment. This notice would amend the existing text to subsection (b) to delete the extant methodology used for calculating the payment of assessment for the second, third and fourth quarters of each calendar year and adding new text for the same purpose to accommodate the method of calculation to the annualized payment method proposed for subsection (a).

This notice would also amend existing text of subsection (c)(1) to reflect the annualized payment and calculation method proposed in subsection (a) and (b) of this section.

This notice would add a new subsection (e) which would provide the Commissioner some flexibility to adjust the annual assessment to not exceed the level of expenditure authorized by the Legislature in the Annual Budget Act.

MATERIAL INCORPORATED BY REFERENCE

There is no material incorporated by reference.

FINDING OF EMERGENCY

California Insurance Code section 1874.81, provides in pertinent portion:

“(a) The Commissioner shall adopt emergency regulations establishing the criteria that shall be used to award grants to district attorneys under Section 1874.8.

(b) The regulations required by Subdivision (a) shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code), and the adoption of those regulations shall be deemed an emergency and necessary of the immediate preservation of the public peace, health, and safety or general welfare.”

DETERMINATIONS

EFFECT ON SMALL BUSINESSES

The proposed regulation will not have an adverse effect on small businesses.

IMPACT ON BUSINESSES AND JOBS

The Commissioner of the California Department of Insurance has determined that the regulations would not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with the businesses in other states.

The California Department of Insurance has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently within the State of California.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Insurance Commissioner must determine the potential impact of the proposed action on private persons or businesses directly affected by the proposal. The proposed regulations are not expected to have significant cost impact on private persons or businesses directly affected. The proposed amendments do not create or impose any additional assessment.

IMPACT ON HOUSING

The matters proposed herein will not affect housing costs.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The California Department of Insurance has determined that there will be no cost savings or increase, nor will these regulations impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(12), the CDI must determine that no alternative considered by the California Department of Insurance would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affect private persons than the emergency action.

The Commissioner must determine that no alternative considered by the agency would be more effective in carrying out the purposes for which the regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations. The amendments proposed in this notice have been developed as a result of discussion with affected entities and members of the public since the original regulations text was adopted and during the promulgation of amendments in a similar grant program.

FEDERAL FUNDING

The matters proposed herein will not affect federal funding.

NON-DISCRETIONARY COST OR SAVING

The matters proposed will not impose any non-discretionary cost or savings to local agencies.

COSTS AND SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to state agencies.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facilities used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below in order to make special arrangements, if necessary).

REPRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed regulations. Written comments transmitted via facsimile machine will not be accepted. Comments should be sent to the agency contact person: Department of Insurance, Fraud Division, Attn: Wesley E. Kennedy, 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826.

All interested persons may present oral/or written testimony at the scheduled public hearing.

ACCESS TO COPIES OF PROPOSED REGULATION AND STATEMENT OF REASONS

The California Department of Insurance has prepared and has available for public review an initial statement of reasons for the emergency regulations and any supplemental information contained in the rulemaking file. Upon prior request, the rulemaking file is available for

inspection at 9342 Tech Center Drive, Suite 100, Sacramento, California, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted. Requests should be directed to the agency contact person (listed above).

The Department of Insurance maintains an internet web site where copies of materials published or distributed by the department may be obtained. That web site is: <http://www.insurance.ca.gov>. Find near the top of the page the heading “Protecting Consumers.” In this section scroll down until you see the subheading “BE INFORMED.” Click on the nearby “search for proposed regulations” link. When the search field appears enter “ER01018366” (the Department’s regulation file number for these regulations). Alternatively, search for the California Insurance Code number of a code section that these regulations implement (e.g., “1874.8”) or search by key word (e.g., “assessment” or “interdiction”). Then click on the “submit” button to display links to the filing documents.

NOTICE OF EMERGENCY RULEMAKING

Pursuant to Insurance Code section 12921.7, a notice of proposed emergency rulemaking, including the informative digest, which contains the general substance of the proposed regulation, and a copy of the proposed regulations were sent to all persons on the Insurance Commissioner’s interested parties mailing list. Pursuant to California Government Code section 11346.4, subsection (a), the Commissioner has also mailed this notice (including a copy of the proposed regulation) to all those who have filed a request for notice of regulatory action pursuant to that section. A proof of service, indicating compliance with Insurance Code section 12921.7 and Government Code section 11346.4, subsection (a) has been filed with this regulatory action package.

ADOPTION OF REGULATION

Following the close of comment period and any hearing, the Insurance Commission may adopt the regulation substantially as described in this notice and informative digest. Copies of the regulations, as adopted, will be sent to all persons on the Commissioner’s interested parties mailing list and to all persons who provided comment during the comment period or at any public hearing, and those persons who have requested copies of information regarding the regulations.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

PUBLIC DISCUSSION

A public discussion was not undertaken prior to the publication of these regulations. The amendments do not involve complex or a large number of proposals that can not easily be reviewed during the comment period. In addition, these regulations amend existing text to

incorporate verbatim regulatory text recently promulgated in a closely related program. It is not anticipated that these conforming amendments will be controversial.

ADDITIONAL STATEMENTS AND COMMENTS

As a result of public comment (oral or written), the Insurance Commissioner may determine that changes to the proposed regulations are appropriate. If those changes are sufficiently related to the original text the public was originally noticed of in the proposed regulatory action, copies of the revised proposed regulations will be sent to all persons who testified at the public hearing or submitted comments during the comment period or at the public hearing, and those persons who have requested copies of information regarding the regulation. The full text of the changed regulations will be available for at least 15 days prior to the date on which the agency adopts, amends, and repeals the resulting regulations.

At least 45 days notice will be given if the changes are not sufficiently related to the original text or that the public was not adequately placed on notice that the changed action could result from the originally proposed action.

If adopted these regulations will appear in Title 10, Chapter 5, Subchapter 9, Article 5, Sections 2698.70 and 2698.71, California Code of Regulations.

CALIFORNIA DEPARTMENT OF INSURANCE

DICK ROSS
Deputy Insurance Commissioner